

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA REGARDING THE
SURRENDER OF PERSONS OF THE UNITED STATES OF AMERICA TO THE
INTERNATIONAL CRIMINAL COURT

The Government of the United States of America and the Government of the Republic of Colombia, hereinafter "the Parties,"

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes;

Recalling that the Rome Statute of the International Criminal Court, done at Rome on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (the "Rome Statute") is intended to complement and not supplant national criminal jurisdiction;

Considering that the Parties have each expressed their intention to evaluate or investigate available information regarding the facts and where appropriate prosecute acts within the jurisdiction of the International Criminal Court alleged to have been committed by their officials, employees, military personnel or other nationals;

Bearing in mind the provisions regarding immunities from jurisdiction in the General Agreement for Economic, Technical and Related Assistance Between the Government of the United States of America and the Government of Colombia (the "1962 Agreement"), as well as other agreements currently in force between the Parties that establish privileges, and the norms of international law applicable in this matter;

Bearing in mind as well Article 98 of the Rome Statute;

Noting that in conformity with the 1962 Agreement the persons covered thereunder, including current or former government officials, employees (including contractors) and military personnel, are not subject to Colombian jurisdiction, as a result of which their surrender, by any means, to the International

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Criminal Court, requires the express consent of the Government of the United States of America;

Noting that under international law, persons of the United States of America who enjoy immunity from Colombian criminal jurisdiction, including functional immunity, are not subject, within the terms of that immunity, to Colombian jurisdiction, as a result of which their surrender, by any means, to the International Criminal Court, requires the express consent of the Government of the United States of America;

Noting that the term "Sending State" has been used in treaties such as the Vienna Convention on Consular Relations of 1963 and in international law to distinguish among states referenced;

Noting the provisions of Section 2007(c) of the American Servicemembers' Protection Act, which states, "The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that such country has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country";

Have herein agreed as follows, with the purpose both to restate existing obligations in this matter and to reach agreement contemplated in Article 98(2) of the Rome Statute:

1. For purposes of this Agreement, the term "person of the United States of America" means any current or former United States government official, employee (including any contractor), or member of the military, or any United States person who enjoys immunity from criminal jurisdiction under international law or who is subject in any manner to the jurisdiction of the Sending State (the United States of America).

2. A person of the United States of America, the Sending State, shall not, absent the express consent of the United States of America:

a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

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b) be surrendered or transferred by any means to any entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the Government of the Republic of Colombia extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Colombia will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the express consent of the Government of the United States of America.

4. This Agreement shall enter into force on the date of its signature by both Parties. It will remain in force until one year after the date on which either Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

Done in duplicate in the English and Spanish languages at Bogota this seventeenth day of September, 2003, both texts being equally authentic.

For the Government of
the United States of
America



STEPHEN RADEMAKER
Assistant Secretary
of State

For the Government of the
Republic of Colombia



CAROLINA BARCO
Minister of Foreign Affairs